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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Appellant,

v.

SERGIO ARMANDO APARICIO,

Defendant and Respondent.

2d Crim. No. B218191
(Super. Ct. No. 1297840)
(Santa Barbara County)

The People appeal from a dismissal entered after a magistrate granted a motion to suppress cocaine seized incident to defendant's, Sergio Armando Aparicio, arrest. (Pen. Code, §§ 1538.5; 1238, subd. (a)(7).)¹ The magistrate found that the officer lacked probable cause to arrest for public intoxication. (§ 647, subd. (f).) We conclude that the search of defendant, a parolee, was lawful and reverse and remand for resumption of criminal proceedings. (*Samson v. California* (2006) 547 U.S. 843, 857 [126 S.Ct. 2193, 2202]; *People v. Reyes* (1998) 19 Cal.4th 743, 754.)

¹ All statutory references are to the Penal Code unless otherwise stated.

Facts

During the early morning hours of June 6, 2009, Santa Barbara Police Officer Christina Ortega responded to a fight-in-progress call. The dispatcher reported that males in white tank tops were about to fight outside a bar.

As Officer Ortega pulled into the parking lot, two groups of men scattered. Defendant, who was wearing a white tank top, attempted to get into the passenger side of a Honda. Officer Ortega twice ordered defendant to step away from the vehicle and sit on the ground. Defendant was too intoxicated to follow directions and turned and squatted. Defendant was unsteady on his feet. Officer Ortega had to order him to sit three times before he complied. He had a strong odor of alcohol, slurred speech, and bloodshot and watery eyes.

During the detention, Officer Ortega learned that defendant was on parole. She arrested defendant for public intoxication. She found Cocaine in defendant's right front pants pocket.

Defendant was charged with possession of cocaine (Health & Saf. Code, § 11350, subd. (a)) and public intoxication (§ 647, subd. (f)). He filed a motion to suppress evidence at the preliminary hearing. The magistrate found that defendant "was clearly intoxicated. He was clearly impaired. He clearly had been drinking. But his conduct [a]s described by the officer was not the conduct of one that is . . . violating Penal Code section 647 (f). So the motion to suppress is granted"

Discussion

We defer to the magistrate's express and implied factual findings where supported by substantial evidence and independently determine whether, on the facts found, the search was reasonable under Fourth Amendment standards. (*People v. Hughes* (2002) 27 Cal.4th 287, 327.)

The offense of public intoxication is committed when a person is intoxicated, in a public place, and is unable to exercise care for his safety or the safety of others. (§ 647, subd. (f); *People v. Lively* (1992) 10 Cal.App.4th 1364, 1368-

1369.) The magistrate here found that appellant was intoxicated but not a danger to himself or others. That, however, does not end the inquiry.

Parole Search

Officer Oretga knew defendant was on parole but stated that she did not rely on defendant's parole status in detaining or searching defendant. The magistrate found that Officer Ortega's testimony "leads me to the conclusion that Officer Ortega did not use the parole status as a basis for conducting the search. She may have used the parole status as a basis for effecting the arrest. That question wasn't posed to her.

Officer Ortega's subjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis. (*Whren v. U.S.* (1996) 517 U.S. 806, 813 [135 L.Ed.2d 89, 98]; *People v. Sanders* (2003) 31 Cal.4th 318, 334.) "It was long ago recognized that 'every very grant of parole include[s] an implied search condition, and an officer's knowledge of parole status [is] equivalent to knowledge of a parole search condition.' [Citations.]" (*People v. Middleton* (2005) 131 Cal.App.4th 732, 739.)

A suspicionless search of a parolee conducted under the authority of section 3067, subdivision (a) does not violate the Fourteenth Amendment.² (*Samson v. California, supra*, 547 U.S. at p. 857 [126 S.Ct. at p. 2202]; *People v. Reyes, supra*, 19 Cal.4th at p. 754.) "[E]ven in the absence of particularized suspicion, a search conducted under the auspices of a properly imposed parole search condition does not intrude on any expectation of privacy 'society is "prepared to recognize as legitimate." ' [Citations.]" (*Ibid.*)

It matters not whether Officer Ortega reasonably believed there was probable cause to arrest for public intoxication. He was on parole and therefore subject to lawful search.

² Section 3067, subdivision (a) proves that every California parolee "shall agree in writing to be subject to search or seizure by a parole officer or other peace officer at any time of the day or night, with or without a search warrant and with or without cause."

The judgment (order granting motion to suppress and dismissal) is reversed. The matter is remanded for resumption of criminal proceedings.

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YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

George C. Eskin, Judge

Superior Court County of Santa Barbara

Christie Stanley, District Attorney, County of Santa Barbara, Aimee Libeu and Gerald McC. Franklin, Senior Deputy District Attorneys, for Appellant.

Gregory C. Paraskou, Public Defender, County of Santa Barbara, Raymond Montes De Oca, Deputy Public Defender, for Respondent.